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8 Attorneys for Plaintiffs,
9 LAFACE RECORDS LLC; ELEKTRA
10 ENTERTAINMENT GROUP INC.; UMG
11 RECORDINGS, INC.; and WARNER
12 BROS. RECORDS INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 LAFACE RECORDS LLC, a Delaware limited
17 liability company; ELEKTRA
18 ENTERTAINMENT GROUP INC., a Delaware
19 corporation; UMG RECORDINGS, INC., a
20 Delaware corporation; and WARNER BROS.
21 RECORDS INC., a Delaware corporation,

22 Plaintiffs,

23 v.

24 JENNIFER LYNN GLASS,

25 Defendant.

26 CASE NO. 4:07-CV-04847-SBA

27 Honorable Saundra Brown Armstrong

28 ***EX PARTE APPLICATION TO EXTEND
TIME TO SERVE DEFENDANT WITH
PROCESS AND ORDER***

1 Pursuant to Rules 4(m) and 6(b)(1)(A) of the Federal Rules of Civil Procedure, Plaintiffs
2 respectfully request an additional 60 days – until August 15, 2008 – to serve Defendant Jennifer
3 Lynn Glass (“Defendant”) with the Summons and First Amended Complaint. In support of their
4 request, Plaintiffs state as follows:

5 1. Plaintiffs filed their initial Complaint against a John Doe defendant on September 20,
6 2007. In order to obtain information sufficient to identify the Doe defendant, Plaintiffs also filed
7 their *Ex Parte* Application for Leave to Take Immediate Discovery, seeking the Court’s permission
8 to serve a Rule 45 subpoena on Defendant’s Internet Service Provider (“ISP”). On October 4, 2007,
9 the Court issued its Order for Leave to Take Immediate Discovery, which was promptly served on
10 the ISP along with a Rule 45 subpoena. On November 16, 2007, the ISP responded to Plaintiffs’
11 subpoena, identifying the Defendant, Jennifer Lynn Glass.

12 2. After the ISP identified Ms. Glass, Plaintiffs sent her a letter notifying her of
13 Plaintiffs’ copyright infringement claim and inviting her to contact Plaintiffs to attempt to resolve
14 the dispute. Although that letter was returned undelivered, Plaintiffs made further attempts to reach
15 Ms. Glass and were eventually able to initiate settlement talks and forward written notification of
16 their claims. The parties did not reach a settlement.

17 3. Accordingly, Plaintiffs filed a First Amended Complaint on February 29, 2008,
18 naming Ms. Glass individually as Defendant.

19 4. Plaintiffs have since made attempts to personally serve Defendant with process, but
20 have so far been unsuccessful. Plaintiffs continue to attempt to serve Defendant.

21 5. The current deadline for service of process expires on June 16, 2008. While the case
22 was still in the Doe stage, the Court issued a January 22, 2008 Order granting Plaintiffs’ previous
23 request for a 90-day extension of the service deadline, and an order on April 17, 2008, granting
24 Plaintiffs’ request to extend the service deadline for an additional 60 days.¹ Given the circumstances
25 of this case, Plaintiffs respectfully request an additional 60 days – until August 15, 2008 – to
26 effectuate service, so that they may continue to attempt to serve Defendant.

27
28 ¹ The Court has also twice granted continuances of the initial case management conference,
which was originally scheduled for January 10, 2008, and is now scheduled for July 16, 2008.

1 6. Plaintiffs' diligence in attempting to serve Defendant demonstrates "good cause"
2 under Rule 4 for an extension of time for service. *See Gambino v. Village of Oakbrook*, 164 F.R.D.
3 271, 275 (M.D. Fla. 1995) (finding good cause to expand the time limit for service where plaintiff
4 made a "reasonable effort to serve defendant"); *see also Matasareanu v. Williams*, 183 F.R.D. 242,
5 245-46 (C.D. Cal. 1998) (stating good cause standard for service extensions). In addition, unlike a
6 traditional case where the defendant is known by name and service attempts can begin immediately
7 after the complaint is filed, in this case Plaintiffs first had to obtain Defendant's identity through the
8 subpoena to the ISP. This Court has discretion to enlarge the time to serve even where there is no
9 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

10 7. Moreover, Plaintiffs believe that Defendant is evading service, as numerous
11 unsuccessful attempts have been made to personally serve her at her home address. Pursuant to Rule
12 4(d)(1) of the Federal Rules of Civil Procedure, Plaintiffs' counsel recently mailed a Request for
13 Waiver of Service of Summons to Defendant on June 3, 2008, allowing her 30 days to respond. If
14 Defendant does not respond to the Request by July 3, 2008, Plaintiffs intend to seek permission of
15 the Court to use alternative methods of service to serve process upon Defendant.

16 8. Because the copyright infringements here occurred in 2007, the three-year limitations
17 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no
18 prejudice to the defendant from any delay in serving the Complaint.

19 9. Plaintiffs will provide Defendant with a copy of this request and any Order
20 concerning this request when service of process occurs.

21 Dated: June 13, 2008

HOLME ROBERTS & OWEN LLP


22
23 By: /s/ Dawniell Alise Zavala
24 DAWNIELL ALISE ZAVALA
25 Attorney for Plaintiffs
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27
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ORDER

Good cause having been shown:

IT IS ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve Defendant with process be extended to August 15, 2008.

Dated: 6/16/08

By: 
Honorable Sandra Brown Armstrong
United States District Judge